

REMARKS/ARGUMENTS

The Examiner has delineated the inventions of Group I-XIV as recited on pages 3, 4, and 5 of the Office Action.

Applicants provisionally elect, with traverse, the invention of Group I, drawn to a compound of formula (1) salts and pharmaceutical composition wherein one of R<sup>1</sup>, R<sup>2</sup>, R<sup>3</sup> or R<sup>4</sup> is an alkoxy group containing 1 to 20 carbon atoms, and the three other groups all represent hydrogen or an alkyl group containing 1 to 6 carbon atoms and X and Y are as defined.

Claims 1-6 read on the elected inventions.

Claims 1-8 are integrally linked as compounds, method for making, and method of use.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct and there would be a serious burden placed on the Examiner if restrictions is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinction. Compounds, method for making, and the method for use should be examined together. It is a technical relationship that involves the same features, and it is this technical relationship that defines the contribution which each of the Groups taken as a whole makes over the prior art.

In chemical cases a specified group of materials which do not necessarily belong to an otherwise class can be claimed together as a “Markush” group. The Markush practice sanctions the claiming together operable substances which could not be defined by generic language but which nevertheless have a community of chemical or physical characteristics. The members of the grouping need only possess at least one property in common which is mainly responsible for the function of the claimed relationship.

In the instant application the common characteristic claimed is the indole derivative wherein X and Y are as defined and wherein at least one of R<sup>1</sup>, R<sup>2</sup>, R<sup>3</sup> and R<sup>4</sup> is an alkoxy group. In essence the compounds can be considered to be positional isomers of each other. All of the compounds exhibit pharmaceutical properties. The same utility in a generic sense suffices.

Further, MPEP at § 803 states as follows:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct and independent inventions.”

Applicants submit that a search of all claims would not constitute a serious burden on the Office. In fact the International Search Authority has searched all of the claims together. As the Office has not shown any evidence that a restriction should now be required when the International Preliminary Examination Report did not, the restriction is believed to be improper.

For the reasons set forth above, Applicants request that the Restriction Requirement be withdrawn.

Applicants request that if the elected invention is found allowable the examination should be expanded to include non-elected subject matter.

Further, Applicants reserve the right to file a divisional application on the non-elected subject matter, if so desired, and be accorded the benefit of the filing date of the parent application.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits and an early notice of such action is earnestly solicited.

Respectfully submitted,

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